

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No. : 10/613,296
Inventor(s) : Bruce William Lavash
Filed : July 3, 2003
Art Unit : 3761
Examiner : Jacqueline F. Stephens
Docket No. : 9322
Confirmation No. : 3945
Customer No. : 27752
Title : SANITARY NAPKIN FOR DYNAMIC BODY FIT

APPEAL BRIEF

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

This Brief is filed pursuant to the appeal from the decision communicated in the Office Action mailed on May 29, 2008. A timely Notice of Appeal was filed on August 29, 2008. Submitted herewith is a Petition for a Three-Month Extension of Time, and the fee required under 37 CFR §1.17(a), providing for a timely response up to and including January 29, 2009.

REAL PARTY IN INTEREST

The real party in interest is The Procter & Gamble Company of Cincinnati, Ohio.

RELATED APPEALS AND INTERFERENCES

There are no known related appeals, interferences, or judicial proceedings.

STATUS OF CLAIMS

Claims 1-2, 5 and 10-15 are rejected in the present application and are appealed. Claims 4, 6-9 and 16-19 were previously canceled by Appellants. Claim 3, which depends from Claim 1, is currently withdrawn.

A complete copy of the appealed claims is set forth in the Claims Appendix attached herein.

STATUS OF AMENDMENTS

No amendment was filed subsequent to the most recent final rejection.

SUMMARY OF CLAIMED SUBJECT MATTER

The presently claimed invention relates to an absorbent article having a longitudinal axis and a periphery, the absorbent article comprising a fluid permeable facing layer, a first absorbent layer joined to the facing layer, a liquid impermeable backsheet joined to the facing layer at the periphery, and a fastening means disposed on at least a portion of a garment facing surface of the fluid impermeable backsheet that defines attachment zones. *See, e.g.*, page 2, lines 12-20. The facing layer of the absorbent article has facing layer zones of enhanced extensibility. *See, e.g.*, page 11, lines 13-25. The first absorbent layer comprises at least one first absorbent layer zone of extensibility, which is a region of the first absorbent layer of relatively higher extensibility than regions of the first absorbent layer adjacent to the first absorbent layer zone(s) of extensibility. *See, e.g.*, page 7, lines 22-32. The first absorbent layer zone(s) of extensibility are in registry (i.e. aligned) with the facing layer zones of enhanced extensibility. *See, e.g.*, page 11, lines 22-25. The joining of the facing layer and the first absorbent layer is substantially limited to the portions of the facing layer intermediate the first absorbent layer zone(s) of extensibility. *Id.* The first absorbent layer zone(s) of extensibility are further decoupled from the attachment zones of the fluid impermeable backsheet. *See, e.g.*, page 7, lines 22-32.

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

Claims 1-2, 5 and 10-15 have been rejected under 35 U.S.C. §102(a) as being anticipated by Chen et al., US 2003/0083631 A1.

ARGUMENTS

Appellants respectfully submit that Claims 1-2, 5 and 10-15 are patentable over the cited references.

Rejection Under 35 USC §102(a) Over Chen et al.

Claims 1-2, 5 and 10-15 have been rejected under 35 U.S.C. §102(a) as being anticipated by Chen et al., US 2003/0083631 A1. Appellants respectfully traverse this rejection.

The presently claimed invention is directed to an absorbent article comprising a fluid permeable facing layer, at least portions of which have facing layer zones of enhanced extensibility; a first absorbent layer joined to the facing layer and comprising at least one zone of extensibility (wherein the zone of extensibility is a region of the first absorbent layer of relatively higher extensibility than regions of the first absorbent layer adjacent to the zone of extensibility); a liquid impermeable backsheet joined to the facing layer at the periphery; and fastening means disposed on at least a portion of the garment facing surface of the liquid impermeable backsheet, the fastening means defining attachment zones, wherein the first absorbent layer zone of extensibility is decoupled from the attachment zones of the fluid impermeable backsheet. In the absorbent article of Claim 1, the zone(s) of extensibility of the first absorbent layer are in registry with the zones of enhanced extensibility of the facing layer and are decoupled from the attachment zones of the backsheet. Additionally, in the absorbent article of Claim 1, the joining of the facing layer and the first absorbent layer is substantially limited to portions of the facing layer intermediate the first absorbent layer zone(s) of extensibility.

As discussed throughout the instant specification, the absorbent article of the present invention achieves improved static and dynamic body fit and improved comfort. This is achieved due to its unique structure which allows the body facing surface of the article to move in concert with the wearer's body and remain in registration with the wearer's vaginal opening during use while permitting the article to remain securely attached to the wearer's undergarments, even when the article and/or the undergarment is subjected to movement (i.e. when the wearer walks, runs, sits, etc.). These unique and important benefits can be achieved by providing zones of extensibility in both the facing layer and the first absorbent layer that are in registry with each other and decoupled from the attachment zones provided on the backsheet of the absorbent article, and joining the facing layer and first absorbent layer at portions intermediate the zones of extensibility.

The disclosure of Chen et al. is directed to an absorbent article having improved body fit wherein a combination of downward-deflecting crease lines and an upward-deflecting shaping line are used in an outer and central absorbent member, respectively, to achieve a form-fitting geometry in the crotch region while over fluid flow in the article.

The absorbent articles described in Chen et al. include a central absorbent member including a shaping line or lines for upward deflection coupled with an outer absorbent member having crease lines for downward deflection. During lateral compression, the deflection along the crease lines produces valleys that can help retain and distribute fluid, while the shaping lines in the central portion of the article help induce upward deflection in the crotch region or other selected regions to achieve the desired degree of body conformity. *See* paragraph 0038 of Chen et al.

The structure of the products described in Chen et al. (e.g. a conventional cover material over a core with deflection portions) as well as the described benefits (e.g. body conformity and fluid distribution) are very different than the structure and benefits of the present invention (e.g. a facing layer with extensible zones in registry with extensible zones of a first layer of the absorbent core which are decoupled from the attachment zones of the backsheet, wherein the facing layer and first absorbent layer are joined at portions intermediate the extensible zones) and the benefits of the claimed invention (e.g. improved static and dynamic fit as well as reduced likelihood of the article becoming detached from the wearer's undergarments). Quite simply, Chen et al. do not provide any disclosure relating to the extensibility of the top layer, much less a top layer having a zone of enhanced extensibility in registry with a zone of extensibility of an absorbent core layer that is decoupled from the attachment zones of the garment fastening means. Chen et al. further do not disclose or suggest joining the top layer and absorbent core layer at portions intermediate the zones of extensibility. Thus, Chen et al. do not disclose, teach or suggest the absorbent article of the presently claimed invention.

More particularly, regarding Claim 1 and all of the remaining claims which depend therefrom, the Office Action fails to show an absorbent article including a facing layer having facing layer zones of enhanced extensibility. Rather, the portions of Chen et al. to which the Office Action refers in support of such teaching merely describe only conventional topsheet materials. For example, paragraph 50 of Chen et al. cited by the Office Action merely indicates that crease lines and shaping lines can be created by "bonding a portion of the cover or backsheet to a compressed portion of the absorbent material using the methods described by Mogor in U.S. Pat. No. 3,575,174 . . ."

However, bonding a cover to a compressed portion of an absorbent material certainly does not teach or suggest a facing layer having zones of enhanced extensibility or any other material properties of the facing layer. The Mogor reference adds nothing to the teaching of the teachings of the Chen reference with regard to a facing layer having zones of enhanced extensibility. Rather, the Mogor reference merely describes an embossing process that provides the article with channels. Clearly, there is nothing in the portions of either Chen et al. or the Mogor reference cited by the Office Action that provide any teaching of a facing layer having zones of enhanced extensibility.

Furthermore, paragraph 89 of Chen et al. cited by the Office Action merely refers to a topsheet, which is not even shown in Figure 1. This paragraph says nothing about the topsheet, other than indicating that the sanitary napkin of Figure 1 has a topsheet that is not shown in the figure.

Since Chen et al. do not teach or suggest a facing layer having zones of enhanced extensibility, Chen et al. cannot teach or suggest facing layer zones of enhanced extensibility and first absorbent layer zone(s) of extensibility being in registry (i.e. aligned) with each other, as required by the present claims.

Even if one assumes, *arguendo*, that the crease lines and shaping lines taught by Chen et al. in paragraph 50 (which are created by bonding a portion of the cover or backsheet to a compressed portion of the absorbent material) constitute zones of extensibility, the joining of the cover and absorbent material would primarily occur at the zones of extensibility. In contrast, the present claims require that the facing layer and first absorbent layer be joined at portions intermediate the zones of extensibility.

Chen et al. also fails to teach a first absorbent layer comprising at least one first absorbent zone of extensibility, wherein the first absorbent zone of extensibility is decoupled from the attachment zones of the fluid impermeable backsheet. Although Chen et al. do appear to teach an outer shaping member that may be extensible, the outer shaping member is only disclosed as being joined to the backsheet which includes a garment adhesive (i.e. attachment zone). For example, in Example 1 (paragraph 0108), Chen et al. state that the outer absorbent member was placed on the backsheet 108 (as described in Table 1) comprising a polymer film with a contact adhesive. It is clear from

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Table 1 that the contact adhesive is used to join the outer absorbent member to the backsheet, which includes a garment adhesive. Further, the rest of the examples and the disclosure in Chen et al. do not provide any teaching that the outer absorbent member is not joined to the backsheet or that any portion of the absorbent core is decoupled from the backsheet including the garment adhesive. Thus, Chen et al. fail to teach or suggest a first absorbent layer joined to the facing layer comprising at least one first absorbent zone of extensibility, wherein the first absorbent zone of extensibility is decoupled from the attachment zones of the fluid impermeable backsheet, as required by the present claims.

Since Chen et al. fail to teach or suggest each and every limitation of the claims, Appellants submit that Claims 1-2, 5 and 10-15 are not anticipated under 35 U.S.C. §102(a) and are patentable over Chen et al. Appellants thus respectfully request reversal of the rejection and allowance of all pending claims.

Once Claim 1 is found to be allowable, Appellants respectfully request that currently withdrawn Claim 3, which depends from Claim 1, be rejoined and allowed.

SUMMARY

In view of all of the above, it is respectfully submitted that the rejection be reversed and that all the pending claims be allowed.

Respectfully submitted,
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CLAIMS APPENDIX

1. An absorbent article having a longitudinal axis and a periphery, the absorbent article comprising,
 - a. a fluid permeable facing layer, at least portions of which having facing layer zones of enhanced extensibility;
 - b. a first absorbent layer joined to the facing layer, the first absorbent layer comprising at least one first absorbent layer zone of extensibility, the at least one first absorbent layer zone of extensibility being a region of the first absorbent layer of relatively higher extensibility than regions of the first absorbent layer adjacent to the at least one first absorbent zone of extensibility, the at least one first absorbent layer zone of extensibility being in registry with the facing layer zones of enhanced extensibility, wherein the joining of the facing layer and the first absorbent layer is substantially limited to the portions of the facing layer intermediate the at least one first absorbent layer zone of enhanced extensibility;
 - c. a liquid impermeable backsheet joined to the facing layer at the periphery, the liquid impermeable backsheet having a garment facing surface;
 - d. fastening means disposed on at least a portion of the garment facing surface of the liquid impermeable backsheet, the fastening means defining attachment zones; and
 - e. wherein the at least one first absorbent layer zone of extensibility is decoupled from the attachment zones of the fluid impermeable backsheet.
2. The absorbent article of Claim 1, wherein the at least one first absorbent layer zone of extensibility comprises openings defining slits.
5. The absorbent article of Claim 1, further comprising a second absorbent layer, the second absorbent layer disposed between the first absorbent layer and the backsheet and joined to the backsheet, wherein the at least a portion of the first absorbent layer is

decoupled from both the second absorbent layer and the attachment zones of the fluid impermeable backsheet.

10. The absorbent article of Claim 1, wherein the at least one first absorbent layer zone of extensibility defines a generally linear pattern of openings defining slits, the generally linear pattern being oriented obliquely to the longitudinal axis.

11. The absorbent article of Claim 1, wherein the at least one first absorbent layer zone of extensibility defines a V-shaped pattern symmetric about the longitudinal axis.

12. The absorbent article of Claim 1, wherein the facing layer comprises a topsheet and a secondary topsheet.

13. The absorbent article of Claim 1, wherein the facing layer comprises an apertured, formed film.

14. The absorbent article of Claim 1, wherein the facing layer comprises a nonwoven web.

15. The absorbent article of Claim 1, wherein the absorbent article is a catamenial device.

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EVIDENCE APPENDIX

None.

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RELATED PROCEEDINGS APPENDIX

None.